

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-263-E - ORDER NO. 2022-____
[DATE]

Cherokee County Cogeneration Partners,)
LLC)

Complainant/Petitioner,)

v.)

Duke Energy Progress, LLC and)
Duke Energy Carolinas, LLC,)

Defendants/Respondents.)

**PROPOSED ORDER OF
DUKE ENERGY CAROLINAS,
LLC AND DUKE ENERGY
PROGRESS, LLC ON
PETITION FOR EXPEDITED
ACCOUNTING AND TRUE-UP**

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Expedited Accounting and True-Up (the “Petition”) filed by Duke Energy Carolinas, LLC (“DEC”), requesting that this Commission enter an order, on an expedited basis, approving DEC’s Accounting of the overpayment of rates paid to Cherokee County Cogeneration Partners, LLC (“Cherokee”) from January 1, 2021 through December 31, 2021. With its Petition, DEC asks the Commission to resolve the final issue in this Complaint proceeding—a true-up of the rates DEC paid to Cherokee during the 2021 calendar year pursuant to extensions of the power purchase agreement (“PPA”) executed by the parties on June 28, 2012 (the “2012 PPA”)¹ as compared to the September

¹ The 2012 PPA was approved by the Commission in Order No. 2012-743.

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2018 rates set forth in Hearing Exhibit 14 and approved in Order No. 2021-604 and Rehearing Order No. 2020-680. DEC contends that it has overpaid Cherokee in the amount of \$3,048,041, as presented in the Accounting, a copy of which was attached as Exhibit B to DEC's Petition. After reviewing the Accounting, and considering the positions of the parties and ORS, the Commission concludes that the record supports DEC's Accounting calculation and finds that Cherokee should reimburse DEC in the amount of \$3,048,041 within five (5) business days of this Order.

PROCEDURAL BACKGROUND

During the pendency of the instant complaint proceeding, the Commission extended the terms of the 2012 PPA between DEC and Cherokee—in Order Nos. 2020-846 and 2021-294. In the second of these Orders, Order No. 2021-294, the Commission recognized that the extensions were likely to result in an overpayment to Cherokee during 2021 and held that “Cherokee should bear the economic risk of any possible overpayment from any extension of the 2012 PPA.” Order No. 2021-294, at 2.

In Order No. 2021-604, entered on August 27, 2021, the Commission provided a pathway for final resolution of the issues raised in this Docket, finding that Cherokee established a legally enforceable obligation (“LEO”) with DEC on September 17, 2018 and ordering Cherokee to notify DEC whether it chose to be paid rates pursuant to the LEO or rates effective as of January 1, 2021. The Commission directed DEC to file “a petition for an accounting and true-up of rates paid [to Cherokee],” following execution of a successor PPA, to account for the “discrepancy between the avoided cost rates paid by DEC to Cherokee on or after January 1, 2021, and during the extension of the 2012 [PPA]” between DEC and Cherokee. Order No. 2021-604 at 41-42 (Ordering Paragraph 10). The

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Commission further directed that such petition should be filed “no later than thirty (30) days from the entry of a successor PPA between Cherokee and DEC, or no later than forty-five (45) days from the service of [the] Order, whichever occurs first.” *Id.*

Both Cherokee and DEC filed Petitions for Reconsideration or Rehearing, asking the Commission to reconsider or clarify its Order, directing the methodology that should be used to calculate DEC’s avoided cost rates as of September 2018. In Order No. 2021-680, entered on October 12, 2021, the Commission clarified that the applicable September 2018 avoided cost rate was set forth in Hearing Exhibit 14 (the Companies’ Late-Filed Exhibit 1). Order No. 2021-680, at 8 (“By way of clarification, . . . we direct the parties to DEC and DEP’s Late Filed Exhibit 1 . . . designated as Hearing Exhibit 14, which sets out DEC’s avoided cost rate.”). On October 22, 2021, Cherokee filed a second Petition for Rehearing and/or Reconsideration, and on November 10, 2021, the Commission again confirmed that “there is a reasonable basis supported by substantial evidence in the record for the Commission’s decision and adoption of the Avoided Energy Rate set forth in Hearing Exhibit No. 14.” November 10, 2021 Directive, at 1.

DURATION OF OVERPAYMENT UNDER 2012 PPA

DEC’s Petition addresses the status of negotiations of a successor PPA as well as DEC’s and Cherokee’s agreement to terminate operations under the extended 2012 PPA as of December 31, 2021. On October 8, 2021, DEC filed a letter in this Docket informing the Commission that, in the absence of execution of a successor PPA, it would not be able to meet the then-upcoming October 11, 2021 deadline for filing an accounting petition to make its customers whole after overpaying Cherokee for dispatched energy since January 1, 2021. DEC represented that it had circulated a draft successor PPA to Cherokee on

September 22, 2021, and, according to DEC Cherokee indicated that it was not prepared to enter into formal negotiations until issuance of a final Commission Order on its Petition for Reconsideration.

By letter dated December 30, 2022, DEC informed the Commission that Cherokee had terminated efforts to negotiate a successor PPA with DEC, and instead would begin merchant operations with The Energy Authority, Inc. (“TEA”) effective January 1, 2022. The Commission understands that Cherokee has, in fact, begun dispatching its energy to TEA under an alternate agreement. Accordingly, DEC’s Petition explains that DEC and Cherokee terminated the parties’ operation under the extended 2012 PPA effective as of December 31, 2021.

SECURITY HELD BY DEC FOR CHEROKEE’S OVERPAYMENT OBLIGATIONS

Pursuant to DEC’s letters filed with the Commission on September 10, October 8, and December 30, 2021 and DEC’s Petition, the Commission understands that Cherokee executed and provided to DEC a \$3 million Letter of Credit as security to partially cover its overpayment obligations, and that the Letter of Credit is currently set to expire on February 21, 2022. In addition, DEC’s Petition explains that DEC is holding an additional \$3,375,267 in security to mitigate risks to its customers, including \$3 million withheld from Cherokee’s August 2021 invoice and \$365,267 withheld from Cherokee’s December 2021 invoice.

ACCOUNTING AND TRUE-UP

According to DEC’s submissions, DEC has overpaid Cherokee in the amount of \$3,048,041 during the Accounting period. This amount reflects the \$6,423,308 difference between the rates applicable to capacity and energy dispatched from the Cherokee Facility

from January 1, 2021 through December 31, 2021 under the 2012 PPA (\$12,567,171) as compared to the September 2018 pricing the Commission has ruled was actually due to Cherokee based upon DEC's avoided costs during this period (\$6,143,863), less the \$3 million DEC withheld from Cherokee's August 2021 invoice as security and an additional \$375,267 withheld by DEC for Cherokee's December 2021 invoice, which DEC is holding as further credit against the overpayment:

2012 PPA Rate (1/21-12/21):	\$12,567,171
Sept. 2018 Pricing (1/21-12/21):	<u>-\$6,143,863</u>
	\$6,423,308
	\$6,423,308
Aug. 2021 Withholding:	\$3,000,000
December Invoice Withholding:	<u>-\$375,267</u>
TOTAL OVERPAYMENT:	\$3,048,041

DEC contends in its Petition that the Commission's expedited consideration of its Petition is needed in light of the imminent expiration of the \$3 million Letter of Credit on February 21, 2022 to ensure that DEC's customers are appropriately protected from potential default by Cherokee and reimbursed for the overpayments made to Cherokee since January 1, 2021 pursuant to the Commission's extension of the 2012 PPA rates. DEC filed the Letter of Credit as Exhibit A to the Petition. Further, DEC notes in the Petition that, if Cherokee refunds the overpayment amount prior to May 31, 2022—i.e., the end of the 2021-2022 review period for the 2022 DEC fuel case—DEC will be able to return the overpayment to customers as part of the 2022 DEC fuel case.

CONCLUSIONS

As a threshold matter, the Commission concludes that expedited consideration of DEC's Petition is reasonable and appropriate. As of December 31, 2021, DEC and Cherokee have discontinued operating under the terms of the 2012 PPA, and Cherokee has

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now commenced merchant operations effective January 1, 2022. Accordingly, DEC will not make any further payments to Cherokee for energy dispatched from the Cherokee Facility under the Commission-ordered extensions of the 2012 PPA, and the overpayment amount is now final. In addition, the Commission notes that the \$3 million Letter of Credit—which DEC holds as security to ensure its customers are made whole from the overpayment to Cherokee—is set to expire on February 21, 2022. The Commission’s expedited decision in this matter will, subject to prompt repayment by Cherokee, allow the parties to avoid the need for either (1) DEC to make a draw on the Letter of Credit; or (2) Cherokee to obtain a further extension of the Letter of Credit.

With respect to DEC’s Accounting, the Commission finds that the Accounting appropriately reconciles the amounts DEC paid to Cherokee for capacity and energy from the Cherokee Facility using the 2012 PPA rates against the amounts owed to Cherokee under DEC’s avoided cost rates, as determined by the Commission in Order No. 2021-604 and subsequent orders on rehearing and reconsideration (i.e., the October 2018 avoided cost rates set forth in Hearing Exhibit 14 calculated based on the September 2018 LEO and the Commission-approved methodology). The Commission, after review, finds that the Accounting accurately reflects the total overpayment DEC made to Cherokee in the 2021 calendar year.

ORDERING PARAGRAPHS

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. DEC’s Petition for Expedited Accounting is granted.

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2. The Commission finds that DEC has overpaid Cherokee from January 1, 2021 through December 31, 2021 in the amount of \$3,048,041 (net of amounts withheld by DEC under prior invoices as security as detailed in the Petition).

3. To the end of holding customers harmless, Cherokee is ordered to reimburse DEC for the excess payments (\$3,048,041) within five (5) business days of this Order.

4. DEC shall return the full overpayment amount to customers as soon as reasonably practicable.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)